

COMMONWEALTH OF KENTUCKY
MINE SAFETY REVIEW COMMISSION
ADMINISTRATIVE ACTION NO. **05 -MSRC- 005**

COMMONWEALTH OF KENTUCKY,
OFFICE OF MINE SAFETY AND LICENSING

COMPLAINANT

vs.

FINAL ORDER REGARDING JAMES E. BYRD

ALGER JENT, **JAMES E. BYRD** &
JERRY D. MORGAN

RESPONDENTS

This matter having come before the Commission on the Joint Motion to Approve Settlement Agreement between the Complainant, Office of Mine Safety and Licensing (OMSL) and Respondent **James E Byrd**, and the members of the Commission having reviewed the Settlement Agreement filed on October 5, 2005 in the matter herein, and the Commissioners being sufficiently advised,

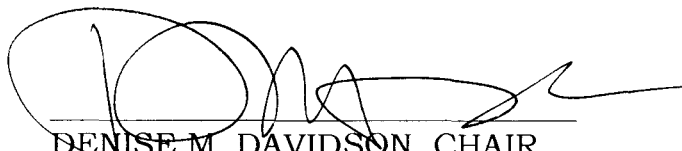
IT IS HEREBY **ORDERED** as follows:

1. The Joint Motion to Approve Settlement Agreement is **GRANTED**;
2. The formal hearing and pre-hearing conference are **CANCELLED**;
3. The **Settlement Agreement** signed by the parties and filed with the Commission is hereby **incorporated by reference** as if reproduced herein in full as a material part of this **FINAL ORDER**. A copy is attached hereto;
4. This Final Order only resolves the matters referenced herein, and any new enforcement action or subsequent penalties imposed during any probationary period are in addition to and not in lieu of those that may be sought by OMSL for the acts or omissions during that probationary period. This Final Order in no way prohibits OMSL from investigating or

filing legal action based upon other activities or omissions by the Respondent not arising from the factual basis of the original violation and resolved herein.

5. This Final Order shall be considered to constitute a “first offense” as that term is defined in 805 KAR 8:010, Section 1(5). Future allegations of separate offenses by Respondent, resulting in an adjudication of guilt by the Commission, shall be deemed “subsequent offenses” as defined by 805 KAR 8:010, Section 1(13);
6. This Final Order represents a final disposition of all issues between the Complainant and the Respondent, in these matters. Failure to comply with the terms and conditions of this Final Order may result in further action by the Commission; and
7. Appellate rights: Pursuant to KRS 351.194(8) and KRS 13B.140(1), an appeal of an order of the Commission must be filed in the Franklin Circuit Court within thirty (30) days of the entry of this Final Order. The petition shall include the names and addresses of all parties of record in this proceeding and shall include a statement of the grounds upon which review is requested. A copy of this Final Order shall accompany the petition. Copies of the petition must be served upon the Commission and all parties of record in this proceeding.

Entered this the 11TH day of October 2005.


DENISE M. DAVIDSON, CHAIR
MINE SAFETY REVIEW COMMISSION

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing FINAL ORDER was served by certified mail, return receipt requested, and by regular mail, postage pre-paid to the following this 12TH day of October 2005:

JAMES E. BYRD
318 CANEY LITTLEFORK
PIKEVILLE, KY 41501

HON. ANGELA HATTON MULLINS
21 N. WEBB AVE.
WHITESBURG, KY 41858
Attorney for ALGER B. JENT

JERRY D. MORGAN
P.O. BOX 1412
JENKINS KY 41537
Respondents

And by messenger mail to:

HON. C. MICHAEL HAINES,
GENERAL COUNSEL
OFFICE OF LEGAL SERVICES
NATURAL RESOURCES LEGAL DIVISION
#2 HUDSON HOLLOW
FRANKFORT KY 40601
502/ 564- 2356
FAX 502/ 564 - 9212

And the original shall be kept on file:

Mine Safety Review Commission
132 Brighton Park Blvd.
Frankfort Ky 40601

A handwritten signature in cursive script, reading "Bryon Alan Thompson", written over a horizontal line.

Bryon Alan Thompson
General Counsel
Mine Safety Review Commission

KENTUCKY MINE SAFETY REVIEW COMMISSION
ADMINISTRATIVE ACTION NO. 05-MSRC-005

KENTUCKY OFFICE OF MINE SAFETY & LICENSING

COMPLAINANT

V. SETTLEMENT AGREEMENT BETWEEN OMSL & JAMES E. BYRD

ALGER JENT, JAMES BYRD &
JERRY MORGAN

RESPONDENTS

* * * * *

Come the Complainant, the Kentucky Office of Mine Safety & Licensing (“OMSL”), and Respondent James E. Byrd (“Byrd”) and hereby state that they have agreed to a settlement of the above-styled disciplinary proceeding, according to the following terms:

In consideration for the final resolution of this action against him, and the cancellation of the hearing (as it pertains to him) that is currently scheduled for October 11, 2005, Byrd hereby admits that he was responsible for the inadequate pre-shift examination on June 24, 2004 at Rama Development Company’s No. 4 mine, in violation of KRS 352.280, as alleged in OMSL’s Complaint. Therefore, Byrd hereby agrees to the following:

1. The probation of his underground mine foreman’s certificate (# A-138-02) for a period of two (2) years, effective upon the entry of this Settlement Agreement by the Mine Safety Review Commission.

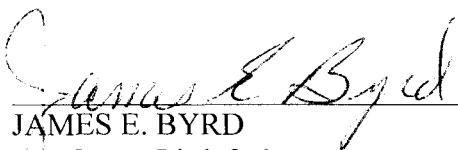
2. During this two-year probationary period, Byrd shall comply with all state and federal mine safety laws and regulations. The willful violation by Byrd of any of said laws or regulations may result in OMSL filing a motion with the Mine Safety Review Commission to revoke his underground mine foreman’s certificate for the remainder of the probationary period.

3. Within one hundred twenty (120) days of the effective date of this Settlement Agreement, Byrd must retake and pass the Kentucky underground mine foreman's examination. If Byrd does not pass or take the test within that time, his underground mine foreman's certificate will be revoked.


Byrd further agrees that this Settlement Agreement and any final order issued herein by the Mine Safety Review Commission will be considered by the Commission to constitute a "first offense", as that term is defined at 805 KAR 8:010, Section 1(13).

Byrd understands and agrees that he has had the opportunity to retain an attorney to represent him in this matter, but that he has chosen to represent himself. Byrd further states that he has carefully read this Settlement Agreement (or that the Settlement Agreement has been read to him), that he has carefully considered the Agreement prior to signing it, and that he understands and agrees to its terms and provisions.

OMSL and Byrd acknowledge and agree that there are no further promises, inducements, representations, or agreements in connection with this Settlement Agreement other than those expressly set forth in writing herein.



JAMES E. BYRD
31/8 Caney Littlefork
Pikeville, Kentucky 41501



PARIS L. CHARLES, Executive Director
KY Office of Mine Safety & Licensing
P.O. Box 2244
Frankfort, Kentucky 40602

9-20-05

DATE

10/6/05

DATE

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Settlement Agreement Between OMSL and James E. Byrd was mailed this 6TH day of OCTOBER, 2005, to:

Angela Hatton Mullins, Esq.
21 North Webb Avenue
Whitesburg, KY 41858

Jerry D. Morgan
P.O. Box 1412
Jenkins, KY 41537



C. MICHAEL HAINES, GENERAL COUNSEL

OFFICE OF LEGAL SERVICES
NATURAL RESOURCES LEGAL DIVISION
KY OFFICE OF MINE SAFETY & LICENSING